

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THE ANNUITY, PENSION, WELFARE,
TRAINING AND LABOR MANAGEMENT
COOPERATION TRUST FUNDS OF THE
INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 14-
14B, AFL-CIO, BY THEIR TRUSTEES
EDWIN L. CHRISTIAN, JOHN CRONIN,
THOMAS D. GORDON, KENNETH
KLEMENS, JR., TYREEF BEVEL, JOHN F.
O'HARE, WILLIAM TYSON and
MICHAEL SALGO, and INTERNATIONAL
UNION OF OPERATING ENGINEERS
LOCAL 14-14B, AFL-CIO, BY ITS
BUSINESS MANAGER EDWIN L.
CHRISTIAN,

Plaintiff,

-against-

REGAL USA CONCRETE, INC.,

Defendants.

MEMORANDUM AND ORDER

Case No. 23-CV-1208 (FB) (RML)

Appearances:

For the Plaintiff:

JAMES MICHAEL STEINBERG
Brady McGuire & Steinberg, P.C.
303 South Broadway, Suite 234
Tarrytown, NY 10591

BLOCK, Senior District Judge:

On September 28, 2023, Magistrate Judge Robert M. Levy issued a Report and Recommendation (“R&R”) recommending that Plaintiffs Annuity, Pension, Welfare, Training and Labor Management Cooperation Trust Funds of the International Union of Operating Engineers Local 14-14B, AFL-CIO (“the Funds”), by their trustees, and International Union of Operating Engineers Local 14-14B, AFL-CIO’s (“the Union”) (together, “Plaintiffs”) motion for default judgment be granted. Plaintiffs filed this action against Defendant Regal USA Concrete, Inc. (“Regal USA”) under the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. §§ 1001, *et seq.* and Section 301 of the Labor Management Relations Act of 1947 (“LMRA”), as amended, 29 U.S.C. § 185, to collect delinquent employer contributions to employee benefit plans.

Regal USA was served with a Summons and Complaint but never responded to the Complaint. The Clerk entered a default against Regal USA on April 3, 2023. Magistrate Judge Levy found that all service and procedural requirements had been satisfied and that the allegations set forth in Plaintiffs’ Complaint stated valid claims sufficient for this Court to enter a default judgment.

Consequently, Magistrate Levy recommended that Plaintiffs are entitled to a finding of liability against Regal USA on behalf of the Funds and the Unions.

Additionally, Magistrate Levy recommended granting Plaintiffs' request for an order permitting an audit of Regal USA's payroll records for the period of July 1, 2018, through January 31, 2023, and, in the event that the audit reveals a deficiency, leave for the Plaintiffs to file supplemental briefing requesting unpaid contributions, interest, statutory damages, and costs. For attorney's fees and costs, Magistrate Levy further recommended that Plaintiffs be awarded \$2,387 in attorney's fees and \$524 in costs.

Magistrate Levy's R&R stated that failure to object within fourteen days of the date of the R&R waives the right to appeal, precluding further review either by this Court or the Court of Appeals. No objections were filed. If clear notice has been given of the consequences of failing to object and there are no objections, the Court may adopt the R&R without *de novo* review. *See Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) ("Where parties receive clear notice of the consequences, failure to timely object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision.") (internal citations omitted). The Court will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000). No such error appears here.

Accordingly, the Court adopts the R&R without *de novo* review and directs the Clerk to enter judgment in accordance with the R&R, specifically: granting Plaintiffs' motion for a default judgment; ordering Regal USA to cooperate with Plaintiffs' audit request for the period of July 1, 2018, through January 31, 2023; permitting Plaintiffs to file supplemental briefing requesting additional relief with proper evidentiary support if, after completion of the audit, Plaintiffs determine that Regal USA failed to properly contributed to the Funds; and awarding Plaintiffs \$2,387 in attorney's fees and \$524 in costs, for a total of \$2,911.

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
October 18, 2023